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## *Attorneys for Debtors and Reorganized Debtors*

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

In re:

## **PG&E CORPORATION,**

- and -

## PACIFIC GAS AND ELECTRIC COMPANY.

## Debtors.

- Affects PG&E Corporation
  - Affects Pacific Gas and Electric Company
  - Affects both Debtors

\* All papers shall be filed in the Lead Case, No. 19-30088 (DM)

Bankruptcy Case No. 19-30088 (DM)

Chapter 11

(Lead Case) (Jointly Administered)

# **REORGANIZED DEBTORS' THIRTY-SEVENTH SECURITIES CLAIMS OMNIBUS OBJECTION (INSUFFICIENT SUBSTANTIVE ALLEGATIONS CLAIMS)**

**Response Deadline: February 27, 2024, 4:00 p.m.  
(PT)**

**Hearing Information If Timely Response Made:**  
**Date: March 12, 2024, 10:00 a.m. (PT)**  
**Place: (Tele/Videoconference Appearances Only)**  
United States Bankruptcy Court  
Courtroom 17, 16th Floor  
San Francisco, CA 94102

1 TO: (A) THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY JUDGE;  
2 (B) THE OFFICE OF THE UNITED STATES TRUSTEE; (C) THE AFFECTED CLAIMANTS;  
3 AND (D) OTHER PARTIES ENTITLED TO NOTICE:

4 PG&E Corporation and Pacific Gas and Electric Company (the “**Utility**”), as debtors and  
5 reorganized debtors (together, “**PG&E**,” the “**Debtors**” or the “**Reorganized Debtors**”) in the above-  
6 captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby submit this Thirty-Seventh Securities  
7 Claims Omnibus Objection (Insufficient Substantive Allegations Claims) (the “**Objection**”) to the proofs  
8 of claims identified in the column headed “Claims to be Disallowed and Expunged” on Exhibit 1 annexed  
9 hereto (the “**Claims**”). Contemporaneously herewith, the Reorganized Debtors submit the Declaration of  
10 Robb McWilliams (the “**McWilliams Declaration**”) in support of the Objection.

11 **I. INTRODUCTION**

12 This Objection seeks to disallow and expunge the Claims filed by certain securities claimants in  
13 the Chapter 11 Cases (the “**Claimants**”) that do not assert the basic legal and factual allegations required  
14 to plead a claim under the federal securities laws. Indeed, the Claims do not even identify what securities  
15 causes of action they purport to assert. The Claims fail to meet the pleading requirements for causes of  
16 action under Federal Rule of Civil Procedure 8(a) and, to the extent the claims seek to raise securities  
17 claims, the heightened requirements for pleading securities fraud under Federal Rule of Civil Procedure  
18 9(b) and the Private Securities Litigation Reform Act of 1995 (the “**PSLRA**”). The Claims should thus be  
19 expunged and disallowed.

20 A proof of claim is functionally equivalent to a complaint in a civil action. The failure to plead  
21 facts sufficient to demonstrate an entitlement to relief under the relevant non-bankruptcy law subjects the  
22 proof of claim to dismissal. Here, the Claimants have failed to plead facts in support of *any* claim, much  
23 less a claim under the heightened pleading standards of the federal securities laws. For example, the most  
24 common claim brought under securities laws is a claim under Section 10(b) of the Securities and Exchange  
25 Act of 1934 (the “**Exchange Act**”). A claim under Section 10(b) requires a claimant to plead with  
26 particularity (1) a material misrepresentation or omission; (2) scienter; (3) in connection with the purchase  
27 or sale of a security; (4) reliance; (5) economic loss; and (6) loss causation. *See Dura Pharms., Inc. v.*  
28 *Broudo*, 544 U.S. 336, 341-42 (2005). A Section 10(b) claim must also meet the heightened pleading

1 standard set forth in the PSLRA, which requires a claimant “to state with particularity . . . the facts  
2 evidencing scienter, *i.e.*, the defendant’s intention ‘to deceive, manipulate, or defraud.’” *Tellabs, Inc. v.*  
3 *Makor Issues & Rts., Ltd.*, 551 U.S. 308, 313 (2007) (quoting *Ernst & Ernst v. Hochfelder*, 425 U.S. 185,  
4 193, and n.12 (1976)). The claim must plead a “strong inference” of scienter that is “more than merely  
5 plausible or reasonable—it must be cogent and at least as compelling as any opposing inference of  
6 nonfraudulent intent.” *Id.* at 314. Here, none of the Claims allege a cognizable cause of action under any  
7 pleading standard, and certainly not under the heightened pleading requirements applicable to securities  
8 fraud claims. As a result, each of the Claims should be disallowed and expunged.

9 Expunging the Claims for failure to plead a claim is particularly appropriate here. In July 2023,  
10 PG&E conferred with a group of securities claimants and proposed deadlines to the Court by which the  
11 Claimants, and all other securities claimants, would have the opportunity to amend their proofs of claim  
12 to assert their own allegations and causes of action, amend their proofs of claim to adopt the allegations  
13 and claims of another securities claimant, or rely on their existing proof of claim. On July 28, 2023, this  
14 Court issued an *Order Authorizing Amendment and Objection Procedures for Securities Claims* [Dkt. No.  
15 13934] (the “**Amendment and Objection Procedures Order**”), implementing an October 6, 2023  
16 deadline for securities claimants to amend their proofs of claim to include their own factual allegations,  
17 and an October 13, 2023 deadline to amend their proofs of claim to adopt the factual allegations of another  
18 securities claimant. The Court expressly required that the Amendment and Objection Procedures Order  
19 be served on all securities claimants, including the Claimants. Despite notice, the Claimants have failed  
20 to amend their proofs of claim.

21 Thus, the Claimants have not satisfied their burden to establish an entitlement to relief, and their  
22 Claims should be disallowed and expunged.

## 23 **II. JURISDICTION**

24 This Court has jurisdiction over the Objection under 28 U.S.C. §§ 157 and 1334; the *Order*  
25 *Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D. Cal.); and  
26 Rule 5011-1(a) of the Bankruptcy Local Rules for the United States District Court for the Northern District  
27 of California (the “**Bankruptcy Local Rules**”). This matter is a core proceeding pursuant to 28 U.S.C. §  
28 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory

1 predicates for the relief requested are section 502 of title 11 of the United States Code (the “**Bankruptcy**  
2 **Code**”) and Rules 3003 and 3007 of the Federal Rules of Bankruptcy Procedure (collectively, the  
3 “**Bankruptcy Rules**”).

4 **III. BACKGROUND**

5 On January 25, 2021, the Court entered the *Order Approving Securities ADR and Related*  
6 *Procedures for Resolving Subordinated Securities Claims* [Dkt. No. 10015] (the “**Securities ADR**  
7 **Procedures Order**”). Among other things, the Bankruptcy Court approved procedures for filing omnibus  
8 objections (the “**Securities Omnibus Objection Procedures**”), including those seeking to expunge  
9 securities claims that are “objectionable under applicable bankruptcy or non-bankruptcy law.” **Securities**  
10 **ADR Procedures Order**, Ex. A-3 ¶ I.C.4.

11 Pursuant to the Amendment and Objection Procedures Order, all claimants purporting to assert  
12 securities claims against PG&E were afforded until October 6, 2023 to submit their own substantive facts  
13 establishing a securities claim against PG&E and until October 13, 2023 to adopt the substantive securities  
14 allegations of another claimant:

15 Any securities claimant may amend its previously filed Proof of Claim by  
16 filing an amended Proof of Claim on or before October 6, 2023 without  
17 leave of Court; provided, however, that any securities claimant may file an  
18 amended Proof of Claim adopting, in whole or in part, the allegations set  
forth in any other securities claimants’ amended Proof of Claim and/or the  
allegations set forth in the [PERA Complaint] on or before October 13, 2023  
without leave of Court.

19 Dkt. 13934-1 ¶ 4. Thereafter, it was expressly disclosed in the Amendment and Objection Procedures  
20 Order that PG&E would object on the basis that securities claimants failed to allege securities claims,  
21 whether by failure to allege sufficient facts to state a claim or by failure to allege proper causes of action  
22 or both, under a standard akin to Federal Rule of Civil Procedure 12(b)(6).

23 The objection deadline for the Reorganized Debtors to object to any Proof  
24 of Claim that was not amended by the October 13, 2023 deadline for  
25 securities claimants to amend their claims shall be December 13, 2023,  
subject to applicable provisions of the Securities Procedures that extend  
such time for all claimants other than the Objectors and Baupost. . . .

27 The Reorganized Debtors intend to make sufficiency objections akin to a  
motion to dismiss with respect to all claims set forth in the unresolved  
28 securities proofs of claim.

1 Dkt. 13934-1 ¶¶ 5 and 9.

2 **IV. RELIEF REQUESTED**

3 The Reorganized Debtors file this Objection, pursuant to section 502 of the Bankruptcy Code,  
4 Bankruptcy Rule 3007, Bankruptcy Local Rule 3007-1, and the Securities ADR Procedures Order, seeking  
5 entry of an order disallowing and/or expunging the Claims, which are identified in the column headed  
6 "Claims to be Disallowed and Expunged" on **Exhibit 1** annexed hereto. Bankruptcy Rule 3007(d) and  
7 the Securities Omnibus Objection Procedures govern omnibus objections to Securities Claims in these  
8 Chapter 11 Cases. *See* Securities Claims Procedures, Ex. A-3 ¶ I.C of Securities ADR Procedures Order  
9 (incorporating Bankruptcy Rule 3007(d)). Pursuant to Paragraph I.C.4 of the Securities Omnibus  
10 Objection Procedures (as well as Bankruptcy Rule 3007(d)), objections to more than one claim may be  
11 joined if the objections are based on the grounds that the claims should be disallowed on some common  
12 basis under applicable bankruptcy or non-bankruptcy law. The October 6, 2023 and October 13, 2023  
13 deadlines to amend has passed, and none of the Claimants have submitted substantive allegations even  
14 attempting to establish an entitlement to relief under the securities laws, either by asserting their own  
15 substantive allegations or incorporating the allegations of another securities claimant. Therefore, PG&E  
16 respectfully requests that the Claims be disallowed and expunged as facially deficient under applicable  
17 law.<sup>1</sup>

18 **V. ARGUMENT**

19 Section 502(b)(1) of the Bankruptcy Code provides that a claim shall not be allowed if it is  
20 "unenforceable against the debtor" under applicable non-bankruptcy law. Thus, where a proof of claim—  
21 the functional equivalent of a complaint—fails to state a cause of action under applicable non-bankruptcy  
22 law, it is disallowed. *See In re Brosio*, 505 B.R. 903, 912 (9th Cir. B.A.P. 2014) ("The filing of a proof  
23 of claim is analogous to filing a complaint in the bankruptcy case."); *In re MacGibbon*, 2006 Bankr.

24 <sup>1</sup> In accordance with Paragraph I.E of the Securities Omnibus Objection Procedures, **Exhibit 1** hereto  
25 provides the following information: (i) an alphabetized list of the Claimants whose proofs of claim are  
26 subject to this Objection; (ii) the claim numbers of the proofs of claim that are the subject of this Objection;  
27 (iii) the amount of claim asserted in each Subject Claim, or a statement that the claim seeks an unliquidated  
28 amount; and (iv) the grounds for this Objection. The Reorganized Debtors will give notice to the holder(s)  
of each of the Subject Claims, the form of which satisfies the requirements set forth in Paragraph I.F of  
the Securities Omnibus Objection Procedures.

1 LEXIS 4903, at \*36 (9th Cir. B.A.P. Oct. 4, 2006) (“The claimant must allege facts sufficient to support  
 2 a legal liability to the claimant in the proof of claim . . . [and f]or a proof of claim to have prima facie  
 3 validity, it must comply with the rules and set forth all the necessary facts to establish the claim”); *In re*  
 4 *Consolidated Pioneer Mortg.*, 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995) (disallowing claim and holding  
 5 that “the claimant must allege facts sufficient to support the claim”) (quoting *In re Allegheny International*  
 6 *Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)); *see also In re Theos Fedro Holdings, LLC*, 2022 WL  
 7 17581985, at \*2 (9th Cir. B.A.P. Dec. 12, 2022) (“[W]e must assess whether the complaint presents a  
 8 cognizable legal theory and whether it contains sufficient factual allegations to support that theory”).

9       The Claimants’ proofs of claim—which are entirely devoid of factual allegations—fail to meet  
 10 any pleading standard, regardless of what causes of action they purport to advance. To the extent  
 11 Claimants purport to assert securities claims under Section 10(b) of the Exchange Act (15 U.S.C. § 78j(b))  
 12 and/or Rule 10b-5 (17 C.F.R. § 240.10b-5) they have failed to plead any of the necessary elements of a  
 13 Section 10(b) claim: (1) a material misrepresentation or omission; (2) scienter; (3) in connection with the  
 14 purchase or sale of a security; (4) reliance; (5) economic loss; and (6) loss causation. *See Dura Pharms.,*  
 15 *Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005). Moreover, a securities plaintiff must plead a “strong  
 16 inference” of scienter that is “cogent and at least as compelling as any opposing inference of nonfraudulent  
 17 intent” (*Tellabs*, 551 U.S. at 314) and meet Federal Rule of Civil Procedure 9(b)’s requirement that every  
 18 element of a securities fraud claim be pled with particularity to survive a motion to dismiss. *Oregon Pub.*  
 19 *Employees Ret. Fund v. Apollo Grp., Inc.*, 774 F.3d 598, 605 (9th Cir. 2014) (“Rule 9(b) applies to all  
 20 elements of a securities fraud action . . .”); *In re Rigel Pharms., Inc. Secs. Litig.*, 697 F.3d 869, 876 (9th  
 21 Cir. 2012) (Rule 9(b) requires Plaintiffs to “state with particularity the circumstances constituting fraud,”  
 22 and to explain “why the statements were false or misleading at the time they were made”).<sup>2</sup> The Claims  
 23 here do not even attempt to allege facts establishing any element of a securities claim.  
 24

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25  
 26       <sup>2</sup> The importance of requiring every element of a securities fraud claim to be pled with particularity was  
 27 highlighted by Congress in passing the PSLRA. *See* 15 U.S.C. § 78u-4(b)(1)(B), (2)(A) (a plaintiff must  
 28 “specify each statement alleged to have been misleading [and] the reason or reasons why the statement is  
 misleading[]” and “state with particularity facts giving rise to a strong inference that the defendant” acted  
 with scienter); *Desaigoudar v. Meyercord*, 223 F.3d 1020, 1022 (9th Cir. 2000) (Rule 9(b) and the PSLRA  
 together require plaintiffs to plead their case “with a high degree of meticulousness”).

1       A bankruptcy proof of claim that fails to allege any claim whatsoever is deficient and must be  
2 expunged and disallowed. This is particularly true here where the claims rest on the trading of securities  
3 and therefore must satisfy the demanding pleading standards for securities fraud claims. *See Fed. R.*  
4 *Bankr. P. 9014(c)* (applying Bankruptcy Rule 7009, which incorporates Civil Rule 9(b) to contested  
5 matters, and permitting courts to apply any other Bankruptcy Rules from Part VII); *see also Morse v.*  
6 *ResCap Borrower Claims Tr.*, 2015 U.S. Dist. LEXIS 9646, at \*10-11, \*20 (Bankr. S.D.N.Y. Jan 26,  
7 2015) (applying Federal Rules of Civil Procedure 8 and 9 to proof of claim and dismissing it as  
8 insufficiently pled pursuant to governing substantive law); *In re DJK Residential LLC*, 416 B.R. 100, 106-  
9 107 (Bankr. S.D.N.Y. 2009) (finding that proof of claim should be analyzed under Rule 8 and Rule 9, and  
10 concluding that the claim failed under either standard as “too general and conclusory to be allowed”);  
11 *Shah v. Motors Liquidation Co. GUC Tr.*, 2013 U.S. Dist. LEXIS 191827, at \*7 (S.D.N.Y. June 3, 2013)  
12 (noting that “in determining whether a party has met their burden in connection with a proof of claim,  
13 bankruptcy courts have looked to the pleading requirements set forth in the Federal Rules of Civil  
14 Procedure” (citation omitted)); *see also* June 7, 2023 Transcript at 46:14-19, 56:2 (“much of what I do by  
15 way of first screening out [a] claims objection is the same as a 12(b)(6) motion” and “[t]he motion to  
16 dismiss is no different from an objection to the claim.”).

17       Pursuant to the Amendment and Objection Procedures Order, the Claimants had until October 13,  
18 2023 to allege or adopt facts supporting their purported securities claims against PG&E, and thereafter  
19 their claims would be subject to a sufficiency objection under a standard akin to Federal Rule of Civil  
20 Procedure 12(b)(6). Because the Claims are devoid of factual allegations to support any cause of action,  
21 much less specific facts pled with sufficient particularity to state a securities fraud claim under Federal  
22 Rule of Civil Procedure 9(b) and the PSLRA, they are deficient and should be disallowed and expunged.<sup>3</sup>

23 **VI. RESERVATION OF RIGHTS**

24       The Reorganized Debtors hereby reserve the right to object, as applicable, in the future to any of  
25 the proofs of claim listed in this Objection on any ground not previously ruled upon, and to amend, modify,

26 \_\_\_\_\_  
27 <sup>3</sup> The Reorganized Debtors and AlixPartners, LLP have reviewed the Claims and have identified that the  
28 Claims fail to allege any causes of action. *See* McWilliams Declaration ¶ 7. Accordingly, the Reorganized  
Debtors submit that the Subject Claims identified in **Exhibit 1** should be disallowed and expunged in their  
entirety.

1 or supplement this Objection to the extent an objection to a claim is not granted, and to file other objections  
2 to any proofs of claims filed in these cases, including, without limitation, objections as to the amounts  
3 asserted therein, or any other claims (filed or not) against the Debtors, regardless of whether such claims  
4 are subject to this Objection. A separate notice and hearing will be scheduled for any such objections.  
5 Should the grounds of objection specified herein be overruled, wholly or in part, the Reorganized Debtors  
6 reserve the right to object to the Claims on any other grounds. *See* Securities ADR Procedures Order, Ex.  
7 A-3 ¶ I.J.

8 **VII. NOTICE**

9 Notice of this Objection will be provided to (i) holder(s) of the Claims; (ii) the Office of the U.S.  
10 Trustee for Region 17 (Attn: James L. Snyder, Esq. and Cameron M. Gulden, Esq.); (iii) all counsel and  
11 parties receiving electronic notice through the Court's electronic case filing system; and (iv) those persons  
12 who have formally appeared in these Chapter 11 Cases and requested service pursuant to Bankruptcy Rule  
13 2002.

14 The Reorganized Debtors respectfully submit that no further notice is required. No previous  
15 request for the relief sought herein has been made by the Reorganized Debtors to this or any other Court.

16 WHEREFORE the Reorganized Debtors respectfully request entry of an order (i) disallowing and  
17 expunging the Claims listed on Exhibit 1 hereto, and (ii) granting such other and further relief as the Court  
18 may deem just and appropriate.

19  
20 Dated: December 13, 2023

Respectfully submitted,

21  
22 **WEIL, GOTSHAL & MANGES LLP**  
23  
24 **KELLER BENVENUTTI KIM LLP**

25 By: /s/ Richard W. Slack

26 Richard W. Slack

27 Attorneys for Debtors and Reorganized Debtors